



# National Association of Federally Impacted Schools

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February 16, 2016

Kristen Walls-Rivas  
US Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

## Comments of the National Association of Federally Impacted Schools (NAFIS) in the Matter of the Notice of Proposed Rulemaking for the Impact Aid Program, Docket ID: ED-2015-OESE-0109

Dear Ms. Walls-Rivas:

On behalf of the National Association of Federally Impacted Schools (NAFIS), we write in response to the Notice of Proposed Rulemaking (NPRM) for the Impact Aid Program. NAFIS membership includes 400 Impact Aid-recipient school districts nationwide that educate millions of federally connected and non-federally connected students. Representatives of NAFIS member districts are school administrators -- superintendents, business officers, and board members -- from across the country who have on-the-ground working knowledge of the Impact Aid program, its current regulations, and how changes to these regulations would affect day-to-day program implementation.

We commend the Impact Aid Program Office and the US Department of Education (ED) for undertaking an update to the Impact Aid regulations, many of which have not been updated since 1995 despite multiple statutory changes. We support the stated purpose of this “regulatory action. . . to improve clarity and transparency regarding Federal program operations; and to improve the LEA’s application processes to generate a more accurate data collection that will facilitate more timely Impact Aid payments.” We believe that many of the proposed regulatory changes meet these goals. We are pleased with aspects of the proposal that will improve the timeliness of payments. However, we are concerned that additional requirements to the Impact Aid application process will make it more difficult and time-consuming for federally impacted school districts to comply with the regulations.

We urge ED to seriously consider these comments as they reflect the voices and opinions of federally impacted school districts that oversee, manage, and implement the day-to-day workings of the Impact Aid program. NAFIS received significant feedback from the Impact Aid community to guide us in developing these comments. NAFIS staff consulted the NAFIS Board of Directors, NAFIS Subgroup leaders, NAFIS state leaders, individual NAFIS members, and distributed information about the NPRM via a webinar and newsletters. We received input from 117 NAFIS members from a survey we conducted, held dozens of individual conversations with NAFIS members, Congressional staff, and education policy and private sector experts with knowledge of specific issues referenced in the NPRM.

We encourage ED to continue to work with the Impact Aid and NAFIS communities following the issuance of a Final Rule, as well as with any other regulatory changes that may be required in a Further

## THE NAFIS FAMILY

### MISA

Military Impacted  
Schools Association

### NIISA

National Indian Impacted  
Schools Association

### FLISA

Federal Lands Impacted  
Schools Association

### MTLLS

Mid-to-Low-LOT  
Schools

NPRM or related to implementation of the Every Student Succeeds Act (ESSA).

In addition to proposed regulatory changes, ED posed the following questions for public comment:

- **What types of technical assistance would you like the Department to provide to properly educate and inform LEAs on the two regulatory methods of data collection, or on other methods?**

In soliciting guidance to develop these comments, we received the following recommendations directly from the NAFIS membership: ED should be commended for establishing Impact Aid listservs and training webinars, which have improved communication. Any changes to the application or accompanying forms should be posted to the website *and* distributed to each LEA. Webinars should not be the primary method to distribute information since the number of participants is capped.

LEAs requested flexibility on the Impact Aid application. ED should consider allowing one Parent-Pupil survey per family. ED should establish an automatic verification system for application submissions, including for signature and assurance pages. ED should coordinate with other offices during the application window to ensure the site is not down for maintenance prior to the Impact Aid application deadline. Additional clarity and technical assistance are needed to avoid confusion about who may sign the Source Check.

We have heard repeatedly from LEAs that Parent-Pupil surveys are disqualified if a parent forgets to include the student's birthdate, or a parent provides an acronym of their home or employee Federal address. Disqualifying these cards and thereby not counting these students is a real financial loss to LEAs. In addressing these oversights, we encourage ED to provide more flexibility.

Cross-agency communication is necessary when information required for the Impact Aid application contradicts other Federal agencies' protocol. One NAFIS member offers an example: "If the CIA instructs their employees not to disclose work locations then the Impact Aid Office should not require that information. . . If the military instructs their personnel not to disclose orders, then the Impact Aid Office needs to work with the military on a workable solution. Since [the] Impact Aid Office demands full addresses and the CIA demands secrecy, the school districts lose funding because the two agencies are not communicating."

- **Are there alternative methods for counting federal-connected children besides the parent-pupil survey form or source check collection tools, either in use or that you propose?**

- **Can you propose ways in which online or electronic data collection might be used to facilitate the data collection process? This may include but is not limited to the electronic collection of parent-pupil survey forms and the use of student information systems for Impact Aid data collection.**

In today's digital world, individuals and organizations continue to adopt mobile, online and other technologies to more efficiently and effectively communicate and manage information electronically. Federal examples include citizens' electronic submissions of FAFSA student aid applications, the US Department of Agriculture's Free and Reduced Lunch application, and IRS tax filings. The current practice of distributing, collecting, collating and counting paper Impact Aid parent-pupil surveys – including the requirement that parents complete a form for each child – is outdated. This sentiment is best summed up by one survey respondent's comment: "The current system is archaic and consumes resources that could be used more effectively to benefit students."

LEAs are embracing technology, such as Student Information Systems (SIS) and Learning Management Systems (LMS) to collect, track and analyze information. According to a 2010 US Department of Education report, "Nearly all school districts have an electronic student information system providing

real-time access to information such as enrollment and attendance. According to district survey respondents, the majority of districts (70 percent) have had this type of system for six or more years.<sup>1</sup> A separate survey reaffirmed the widespread use of digital systems by K-12 organizations, finding, “Nearly 95-percent of respondents reported having an installed SIS solution and nearly 50-percent reported having an installed LMS solution.”<sup>2</sup>

The Impact Aid Office has gone through its own technological evolution, transitioning from paper to electronic Impact Aid applications, and providing webinars and listservs, to the current system redevelopment. These changes will ensure more accuracy, efficiency and better customer service. This same mindset of using technology to improve ED’s own work should be applied to how to improve the process for LEAs to apply for Impact Aid funding. Much has changed since the Impact Aid Office last piloted the use of electronic data. A modernization of the program is overdue!

The inclusion of a military student identifier in ESSA further underscores the need to modernize the Impact Aid program. Once implemented, the military student identifier should provide LEAs with an accurate count of children of active duty service members. Without an electronic count for Impact Aid, military impacted LEAs will go through the duplicative process of identifying military-connected students in their communities twice.

NAFIS believes that there are a variety of technologies LEAs can successfully implement as an alternative to the Parent-Pupil survey or Source Check. We implore ED to clearly articulate to LEAs what electronic methodologies are currently accepted, quickly establish a formal process to explore potential opportunities for a third option to count students – including a possible pilot, and review potential regulatory changes that might be required for such an approach.

We have spoken with numerous individuals from the private sector about the data and communications systems currently in place and available in schools and districts across the country. Based on these conversations, we believe a regulatory change might not be required for some LEAs to implement a digital student count. Current systems – such as SIS, E-forms, and parent portals – allow for an audit trail and student enrollment confirmation, and there is precedent allowing for E-signatures. While we expect LEAs can currently leverage electronic mechanisms and formats for Impact Aid data collection and reporting, whereby the information can be authenticated and remain auditable, we believe many LEAs may not understand that this use of technology is allowable, consistent with precedents at ED and across Federal agencies. Therefore, we request that ED provide clear guidance about what electronic means are allowed, including how LEAs may collect the information required for the Source Check or Parent-Pupil forms, as well as electronic parent signatures.

LEAs regularly employ a variety of technologies to communicate with parents, such as parental notification via email or text, writeable eForms, eSignatures, and parent portals or other online or mobile user interfaces to provide and update required information. These processes and formats can expedite timelines, save parents time completing forms, save LEAs time by reducing manual data entry,

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<sup>1</sup> See *Use of Education Data at the Local Level: From Accountability to Instructional Improvement*, U.S. Department of Education, Office of Planning, Evaluation, and Policy Development (Jan. 2010). Available online at: <https://www2.ed.gov/rschstat/eval/tech/use-of-education-data/use-of-education-data.pdf>

<sup>2</sup> See *Closing the Gap: Turning SIS/LMS Data into Action*, Gartner, Inc. (2011). Available online at: [http://cosn.org/sites/default/files/education\\_community\\_attitudes\\_toward\\_sis\\_lms\\_solutions.pdf](http://cosn.org/sites/default/files/education_community_attitudes_toward_sis_lms_solutions.pdf)

reduce data entry error, save LEAs money by reducing staff time and paper (purchasing, mailing, processing), and present information in a format that can be more easily managed and processed. Further, electronic signatures are recognized by law and in technical and legal standards, and enable the electronic completion and processing of forms and other documents requiring legal signature.

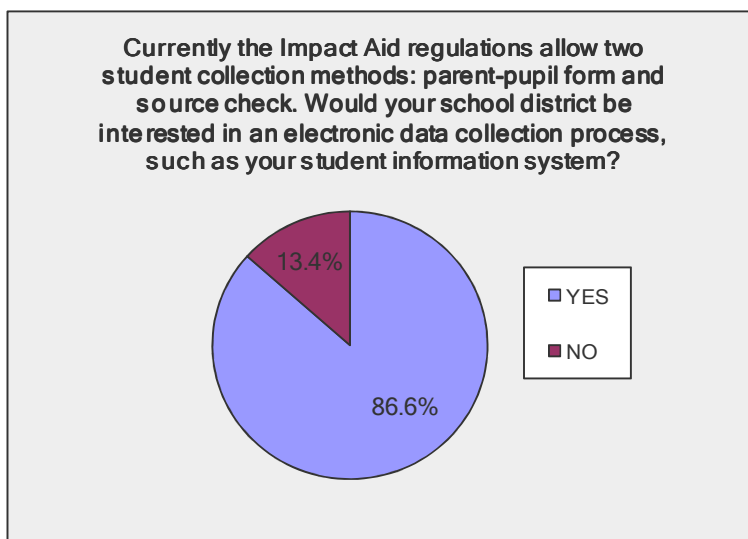
The NAFIS community is expressing an unprecedented willingness and eagerness to identify the shortcomings of the current process and contribute potential solutions. The NAFIS member survey yielded 117 responses, including overwhelming interest – 86.6 percent – in an electronic data collection process (see chart). Survey respondents noted:

“The time and effort required for the current system is a drain on the reduced staff we have.”

“The survey form is out-dated. Today's electronic systems are faster, economical, and more accurate.”

“All of [our] student records are electronic, so this would be a benefit and time saver for the district.”

Multiple respondents noted – and NAFIS agrees – that an electronic option to count students should be considered a third option and not, at this point, replace either the Parent-Pupil survey or the Source Check. Not every federally impacted LEA is prepared or has the capability to implement such a system for the Impact Aid program. For LEAs that are ready, we believe an electronic option would be a huge benefit.



Each form that is not returned or able to be counted for an eligible federally connected child represents a loss of Impact Aid funding. Return rates could be low for a number of reasons: school staff may not have the capacity or systems to identify and follow-up with parents who have not returned forms; parents refuse to complete the forms for privacy reasons; parents do not know the correct information required on the form, such as the specific employee address required by ED; forms are lost; and parents are not available to complete them, perhaps due to deployment.

NAFIS believes that, over the long run, the electronic count will significantly reduce the burden of the Impact Aid application process. We believe this method will be cost-effective and reduce staff time for LEAs that choose to use this method, and potentially improve the accuracy of the count. We also believe an electronic count will make the audit process and general oversight of the program less burdensome for ED's Impact Aid staff.

NAFIS members agree. Survey results revealed that 83.8 percent of respondents “believe an electronic data collection process would reduce the administrative burden of the Impact Aid application for [their] district.” They offered specific examples of how using electronic data would be more efficient:

“We do not have [the] manpower in a small district. . . our budgets are getting smaller every year. . . having to send someone out to get signatures from groups that are the same each year is redundant.”

“We currently have to process 22000 - 28000 forms. Having those forms electronically to begin with would greatly reduce time, freeing up staff for other projects.”

“All of the information requested on the survey form is already in our student data base. . . the parents electronically put in all of their data. It would reduce the amount of time my staff need to produce the surveys, send them out and then get them back in, check them and have parents come back in to fix their mistakes. We employ two people to do this job.”

For very large LEAs, the process of applying for Impact Aid is immense. Individuals we have spoken with at other Federal agencies, on Capitol Hill, and in the private sector are stunned when they learn about this process. We encourage ED to closely review comments and supporting documentation submitted by the Hawaii Department of Education and Killeen Independent School District as to the staff, time, and resources that must be deployed to apply for Impact Aid. “Last year, Hawaii had 23,736 federally connected students, according to the survey results. Of those, 13,978 were military dependents. That’s far lower than the estimated 21,000 to 25,000 school-age military dependents living in the state in 2012, according to a study by Johns Hopkins University.”<sup>3</sup> Killeen hires approximately five staff for approximately four months to process Parent-Pupil surveys. While this process certainly yields significant Impact Aid funding for these and other federally impacted school districts, there simply must be a better way for LEAs to apply for funding and meet the regulatory requirements.

It is our understanding that the three main issues confronting ED about transitioning to an electronic count focus on ensuring the student is enrolled on the survey date, an audit trail, and the parent signature. We are confident that ED, in consultation with the Impact Aid community and the private sector, can move forward to implement an electronic count.

- 1.) Method to verify information annually to ensure the student is enrolled on the survey date (e.x. military personnel moves): Verifying student enrollment can now be done with the click of a button. LEAs can run a report or take an enrollment snapshot from their SIS. One option to collect the required information would be for LEAs to email a secure link to parents to open, verify the data, make changes, and certify it. Many LEAs already have the capacity to do this. LEAs in Georgia report attendance to the state daily. LEAs in Montana upload student information directly to the State several times a year. California has a central data system and an annual October survey date when LEAs submit information for State funding.

A benefit of eForms is the potential increase in accuracy. For example, electronic forms, even simple editable PDF forms, can instantly verify information, like addresses. Pre-populated information would ensure eligible students are not eliminated by ED staff for simple errors such as abbreviating the name of a military installation or an inaccurate address. Plus, many SIS include most of the information required for the Parent-Pupil survey.

- 2.) Audit trail: LEAs rely on their SIS to provide information to the Federal Government, States, and third-party auditors on a regular basis. Systems can time-stamp data and identify, hold, and backup fields to be audited. Electronic documents could potentially expedite the labor-intensive

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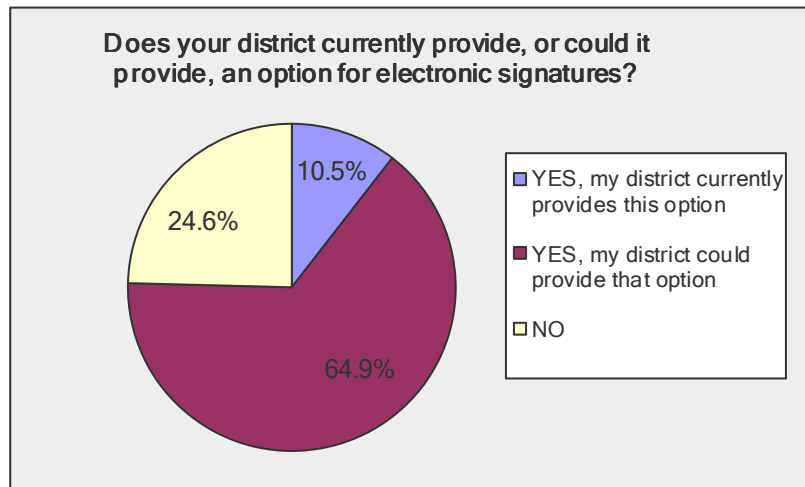
<sup>3</sup> See “*Count On It: Hawaii Schools Missing Out on Aid They’re Due for Serving Military Families*,” Jessica Terrell (July 2015). Available online at: <http://www.civilbeat.com/2015/07/count-on-it-hawaii-schools-missing-out-on-aid-theyre-due-for-serving-military-families/>

audit process. Rather than sifting through paper Parent-Pupil surveys in person, reviewing data electronically could reduce time and costs for Impact Aid staff.

ED should consider a Further NPRM to address regulatory changes that may be required to allow for electronic documents. For example, Impact Aid regulation 222.9 What Records Must a Local Educational Agency Maintain?, states, in part, “An LEA must maintain adequate written records to support the amount of payment it received under the Act for any fiscal year.”

3.) Authenticity of signature:

Electronic signatures have the same legal standing as printed signatures. Multiple Federal and State laws offer guidance on this issue, such as the Electronic Signatures in Global and National Commerce Act (ESGN), the Government Paperwork Elimination Act (GPEA), and the



Uniform Electronic Transactions Act (UETA). UETA, for example, “establishes the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing the barriers to electronic commerce.”<sup>4</sup> To secure an electronic signature, LEAs could have parents log on to a parent portal or the LEA could email a secure link for the parent to open, make changes, verify the data, and certify it.

Many LEAs currently allow parents to use the library or offer public kiosks for families who may not have access to internet at home. Certain systems that have mobile applicability would ensure families with a phone, but not internet access, could complete Eforms. The capacity of LEAs to collect an electronic signature varies. According to the NAFIS survey, a combined 75.4 percent of respondents said either they can currently collect an electronic signature or that they would be able to do so (see chart). One survey respondent noted: “We already have electronic signatures for parents that enroll their students on-line, so this would not be an issue for us.”

ED should consider a Further NPRM to address regulatory changes that may be required to allow for electronic documents, for example, a change to the signature date. If a parent provides information within 60 days of the survey date, information should be considered valid for the survey date. The current date in regulations is somewhat arbitrary. An LEA could confirm student enrollment with attendance records. This proposed regulatory change would allow LEAs to use information collected during annual registration and from the SIS. This approach would align with what is accepted for Free and Reduced Lunch applications.

<sup>4</sup> See: *The National Conference of Commissioners on Uniform State Laws*. Available online at: <http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act>

As ED moves forward on this important issue, we encourage the Impact Aid Program Office to coordinate and work directly with the Office of Education Technology and the US Digital Services. Additionally, ED should work with the Impact Aid community and the private sector to develop viable solutions to update this program. This modernization would certainly align with the Obama Administration's ConnectEd initiative that supports K-12 schools in their transition from print to digital.

With clarity and action, we expect Impact Aid grantees to significantly enhance their use of technology to create a more efficient, cost-effective, timely and accurate process that will best serve LEAs, families, and taxpayers.

## Summary of Proposed Changes

### **222.2 - Membership:**

The clarification of membership that a student must reside in the state in which the LEA is located is consistent with the statute, other than the exception where there is a formal agreement between states.

NAFIS supports this proposal to clarify the definition of membership.

### **222.2 - Parent Employed on Federal Property:**

Clarifying the eligibility of children whose parent is a Federal worker but who teleworks, makes a lot of sense, given how significant technology has revolutionized the way society works and the opportunities for employees to work remotely. However, the proposed regulation states further: *"Except as provided in paragraph (1)(ii) of this definition, the term (parent employed on federal property) does not include a parent who is not employed by the Federal government and reports to work at a location not on Federal property, even though the individual providing services to operations of activities authorized to be carried out on Federal property."* The wording of this proposal *could* be inaccurately interpreted to disqualify a parent who is not employed by the Federal Government, but who reports to work each day on Federal property. For example, a civilian employed at a convenience store on a military installation or a civilian employed at a casino located on Indian Lands.

NAFIS recommends a re-wording to clarify that (a non-Federal employee is eligible if the individual reports to work on Federal property) this proposal is not changing the civilian category. The wording, as currently drafted in the NPRM, is causing a lot of confusion among the NAFIS membership.

### **222.3 & 222.5 - How Does an LEA Apply for Assistance Under 8002 and 8003? & When May an LEA Amend its Application?:**

ED's attempt to improve the timeliness of payments -- and avoid Impact Aid Office staff from conducting duplicative application reviews -- by shortening the amendment timeline is a commonsense change. Moving up the amendment deadline from September 30 to June 30 will help ensure application and field reviews are completed promptly and to ensure that final payments can be made within the "Timely Payments" window as provided in the Impact Aid Improvement Act and ESSA. There is certainly more onus on ED to complete all necessary reviews and be prepared to pay all LEAs by the beginning of the Fiscal Year (FY), October 1.

However, there are LEAs that are concerned about limiting the time they have to process the breadth of information required for the application and submit an amendment by June 30 because of the archaic application system. One survey respondent cautioned: "For larger divisions, meeting the current 9/30

deadline can sometimes be a challenge depending on the compliance level of parents, the review and collections efforts of teachers, and the time central office staff spends reviewing and entering and collating the data.”

NAFIS supports moving the amendment deadline to June 30, with the understanding that ED will communicate clearly and regularly with LEAs regarding any change to the application or amendment timeline and provide timely and consistent technical assistance to LEAs between January and June to ensure LEAs have a fair opportunity to complete their processes by the new deadline.

**222.22 - How Does the Secretary Treat Compensation from Federal Activities for Purposes of Determining Eligibility and Payments?:**

The proposed regulations would count a Payment in Lieu of Taxes (PILT) as Federal revenue against an LEA’s Federal Properties payment. The new formula in the Impact Aid Improvement Act and ESSA was included in statute prior to ED’s proposal to include PILTs. Changing the formula to an average dollar-per-acre valuation of Federal property -- rather than “highest and best” -- reduced subjectivity and expedited payments, but also greatly reduced LEA’s maximum payments. Therefore, PILTs combined with the LEA’s current payment could exceed the LEA’s new maximum payment, causing the LEA to lose its eligibility. We have been notified that several LEAs could lose their Impact Aid funding as a result of this proposal.

NAFIS recommends that ED refrain from enacting this regulatory proposal to include PILTs until a thorough examination of how this change could impact current Federal Property recipients has been completed or a change in statute directly addresses the issue.

**222.23 - How are Consolidated LEAs Treated for the Purposes of Eligibility and Payment?:**

The proposed regulation is consistent with the statute and ED’s current practice.

NAFIS supports this proposal as it is consistent with current practice and the statute.

**222.24 - How Does an LEA that has Multiple Tax Rates for Real Property Classifications Derive a Single Real Property Tax?:**

The proposed regulation is consistent with ED’s current practice.

NAFIS supports this proposal as it is consistent with current practice and the statute.

**222.30 - What is “Free Public Education?”:**

This proposal appears to be consistent with the intent of the statute. We appreciate that all first-time Impact Aid applicants must go through a rigorous process to ensure the LEA is truly public and not created to siphon Impact Aid funds from eligible LEAs. As ED considers additional charter school applicants seeking Impact Aid funding, it should be mindful that charter schools have neither taxing authority nor designated boundaries, and that the purpose of Impact Aid is to offset the loss of local tax revenues for LEAs due to the presence of Federal property or Federal activities.

**222.32 & 222.33 & 222.34 - What Information does the Secretary Use to Determine an LEA’s Basic Support Payment? & 222.33 When Must an Applicant Make Its Membership Count? & 222.34 If an Applicant Makes a Second Membership Count, When Must That Count be Made?:**



The proposed regulation states that LEAs must submit a “timely and complete” application, eliminating the opportunity for LEAs to adjust their membership count as an amendment. We have several concerns about this proposal that would, in effect, eliminate the amendment process.

There are a variety of situations that require an adjustment to the LEA’s membership count, not the least of which are the time and resources required for LEAs to complete the application within the allotted window. Large LEAs, for example, format, print, distribute, collect, organize and analyze 10,000, 40,000 or 180,000 Parent-Pupil surveys. The staff time involved with re-verifying the information for completeness and accuracy that may then require additional follow-up and communication with parents or Source Check signers, continues after the application deadline. One concerned respondent noted: “We continue to receive some corrected survey forms from parents past January 31, for questions we had from our September survey, that cause our counts to change. We also continue to validate that the counts are accurate after January 31, which can result in some corrections to the application.”

The amendment process exists for a reason: LEAs submit the best data available at the time of the application deadline. Allowing LEAs to make adjustments ensures all federally connected students are counted and that LEAs are reimbursed the appropriate amount.

We believe that ED is proposing this change, in part, to speed up the payment process and avoid dedicating staff time on duplicative application reviews. We believe the proposal to shorten the amendment deadline from September 30 to June 30 -- which we support -- should address this very issue. With the changed amendment deadline, ED staff would have a full three months to review applications prior to the start of the fiscal year, and without additional or altered application information. To us, this makes the proposed membership count change unnecessary.

Prior to issuing a Final Rule on this issue, ED should consider potential unintended consequences. For example, we believe preventing LEAs from amending the membership count creates a perverse incentive for LEAs to over-estimate their membership count in the application. This could, in turn, force ED to employ additional staff time and resources for auditing.

NAFIS opposes this proposed regulation that would, in effect, eliminate part of the Impact Aid application amendment process.

**222.33 - When Must an Applicant Make Its Membership Count? & 222.34 If an Applicant Makes a Second Membership Count, When Must That Count be Made?:**

The proposed change eliminates the option for an LEA to conduct a second membership count. The elimination of the second membership count will unfairly penalize LEAs that have influxes of federally connected children. Although infrequently used (according to the NPRM, it was used twice in 2012), a second membership count provides an opportunity for LEAs to take a second count if the LEA’s enrollment increases between February and May. This option is especially critical for LEAs located near military installations whose student enrollment may increase unexpectedly due to redeployments or base realignment. Federal activities, including Department of Defense actions, do not align with the school year or Impact Aid application cycle. As a result, the elimination of the second membership would delay critical Impact Aid funding for a full school year.

Example: Fall 2015 - LEA submits 350 FCCs by January 2016 application deadline for payment in the 2016-2017 school year. March 2016 - LEA receives an additional 125 FCCs for the 2015-2016 school year. With the second count, the LEA could include the additional FCCs in the Fall 2015 count for payment in

the 2016-2017 school year; without the second count, the LEA must wait to count the additional FCCs in the Fall of 2016 for the 2017-2018 school year.

Furthermore, Congress has expressed support for the idea of a current-year count, as included in ESSA, to ensure LEAs are paid in a timely manner following increased Federal enrollments due to Federal activities or school closures. However, the current-year count only applies if the FCCs increased by 100 students or 10 percent between the end of one school year and the beginning of the next school year. This underlines the continued need for the second membership count.

NAFIS opposes eliminating the option for a second membership count. Infrequently used, it will not save ED significant staff time, however it is an important option for LEAs that see an increase in enrollment.

### **222.35 - How Does an LEA Count the Membership of its FCCs?:**

#### **Parent-Pupil Survey:**

The proposed regulation clearly identifies the information required on the Parent-Pupil survey, as well as who may sign the Parent-Pupil survey; these changes should prevent confusion moving forward if this information is annually and clearly disseminated to LEAs. ED should consider allowing multiple children in one family on the same Parent-Pupil survey and eliminating unnecessary items on the Parent-Pupil survey, such as pay grade for military personnel.

We hear consistently that there are a variety of reasons parents refuse to complete the survey forms that represents a direct loss of funding. One reason, in particular, demands cross-agency coordination. It is our understanding that the Central Intelligence Agency and other security agencies specifically instruct personnel to not disclose their personal (home address) or employment information. An LEA should not lose out on valuable resources from ED because of another agency's policy. We urge ED to find a viable solution to this challenge to ensure LEAs receive the Impact Aid funding they deserve.

NAFIS recommends that ED allow more than one child to be listed on a Parent-Pupil survey. NAFIS recommends that ED work closely with other Federal agencies to ensure the items required to be completed on the Parent-Pupil survey are permitted by the agency where the parent is employed.

#### **Source Check:**

LEAs may face difficulty in securing signatures for the Source Check and determining official parent addresses. It would be helpful for ED to better clarify and disseminate information regularly as to who may sign the Source Check, as well as consider flexibility as to who may sign, based on individuals who have appropriate access to local information and the authority to certify the document. For example, an individual in a Tribal realty office may be better suited to certify the Source Check than a Tribal official.

ED should work more closely with, and provide greater flexibility to, LEAs when certifying addresses located on Federal property. We are aware of both military installations and Indian lands where specific addresses or building numbers do not exist, such as the Pentagon. A superintendent who lives on Indian lands in Arizona told us there is no number associated with her house. With widely available advancements like Geolocation and Google Maps, students should not be disqualified if the parent's employer or home address does not exist, but is clearly located on eligible Federal property.

NAFIS is very concerned by the elimination of the Parent-Pupil survey for Indian lands and Low-Rent Housing children. ED's intent to make the application process simpler and more accurate is undermined by the fact that, for some LEAs, using the Parent-Pupil survey is the preferred collection tool. Requiring

the Source Check could increase the administrative burden for some LEAs and force a duplicative process, particularly for large LEAs. For LEAs that are monitoring dozens of different Tribal or Low-Rent Housing properties, the Source Check may not be a better alternative. Some LEAs have very sophisticated (expensive) operations in place to collect data via the Parent-Pupil survey; it could be time-consuming for that district to change its data-collection method. Survey respondents said just that: “Due to us only having a few LRH sites, it is more time consuming to have SC done rather than survey forms,” and “We have an unreliable Low-Rent Housing option for source check.”

School administrators may have a great deal of difficulty completing the Source Check, such as spending hours upon hours driving around to get the required signatures. Federal Housing, Tribal, Bureau of Indian Affairs officials or tax assessors may refuse to sign the Source Check, or refuse to even take the time to review the information submitted to them, leaving administrators with few options to submit an accurate student count. One respondent noted: “We have been informed by low-rent housing officials that they are not permitted to disclose that information. . .” Tribal politics, or the relationship between the Tribe and the LEA may be unpredictable. The cost-saving analysis does not take into consideration the months or years it may take for administrators to build trusting working relationships that enable an easy signature process. We heard recently that a military housing official requested the school employee file a Freedom of Information Act request prior to their consideration of signing the Source Check. Another school administrator was denied a signature by a HUD official because of FERPA concerns. These are just a few examples.

Perhaps the Source Check yields fewer errors, but ED can encourage the use of Source Check or describe how it may be advantageous without tying the hands of school administrators. We feel strongly that both survey methods should be available to all Impact Aid districts. There are only two data-collection methods to begin with; the authority over which method to use should remain a local decision.

NAFIS opposes the proposed elimination of the Parent-Pupil survey for Indian lands and Low-Rent Housing children. We believe ED should maintain the current practice of allowing LEAs to count their students with either the Source Check or the Parent-Pupil survey.

**222.37 – How does the Secretary Calculate Average Daily Attendance?:**

The proposed regulation will expedite the payment process by allowing the Secretary to calculate a negotiated ADA ratio for the 15 states that do not currently use a negotiated ratio. ED should be commended on this change that will ease the administrative burden on LEAs, while continuing to allow an LEA to use its individual ADA ratio.

NAFIS supports the proposed change to calculate a negotiated ADA ratio.

**222.40 – What Procedures does an SEA Use For Certain LEAs to Determine GCDs Using Additional Factors, for LCR purposes?:**

We understand the rationale for this proposal but are concerned about the implementation. For this to be workable, ED would need to significantly update the timeline to ensure LEAs have access to this data prior to the application deadline. For example, ED sent the FY 2016 data request to SEAs in December 2015. ED’s current timeline would make it impossible for an LEA to submit this data with the application since this process is nearly a year after the application for FY 2016 funds was due. We are concerned that LEAs are at the mercy of the State with regard to the certification, particularly when the State has no incentive to provide this data in a timely manner. Additionally, this proposal would shift the coordination of this data from ED to school districts, increasing the administrative burden for LEAs.

NAFIS is concerned about requiring an LEA to submit GCD data, certified by the State, at the application deadline. An LEA may be unable to secure this information from the State in time for submission. NAFIS recommends that ED continue to examine this proposal to determine if it is realistic to implement.

**222.62 – How are LEAs Determined Eligible Under Section 8003(b)(2)?:**

This proposal adds an additional application burden for potential b(2) LEAs. We understand that this change could speed up payments since ED cannot distribute b(2) payments until all LEAs that have checked the box to be considered for eligibility have been reviewed. However, ED is shifting the data collection burden by requiring an LEA that is applying for b(2) funding to provide the tax rate, per-pupil expenditure (PPE), and FCC percentage data with the application. LEAs – even continuing LEAs -- may not have access to this information. If they do, they may not have access to this information by the application deadline.

The current timeline of when information is available is not conducive to this regulatory change. For example, LEAs should not be penalized if the National Center for Education Statistics (NCES) does not have final PPE data. ED would need to dramatically expedite its own data dissemination timeline. For the FY 2016 application due in January 2015, ED will not make a b(2) determination until March 2016; ED is just now sending information requests to States. LEAs should not be expected to have access to eligibility data a full year ahead of when ED currently solicits this information.

ED should provide additional technical assistance to LEAs, including an SEA contact. Currently, some LEAs feel out of the loop; administrators tell us that they have different tax rate information than what the State is providing to ED. We are concerned that LEAs will face difficulty securing SEA certification by the Impact Aid application deadline. State staffing has been reduced; there is not necessarily a designated staff to handle Impact Aid requests.

The number of b(2) applicants is not excessive. For example, in FY 2014, 67 LEAs out of 1,176 checked the box; in FY 2015, 82 LEAs out of 1,225 checked the box. Perhaps ED could update the application to include an explanation of b(2), with the idea of reducing the number of LEAs that check the box.

NAFIS opposes this proposal. We are skeptical LEAs can provide the data by the application deadline under the current timeline. We are concerned that LEAs are at the mercy of the State with regard to this procedure, particularly when the State has no incentive to provide this data in a timely manner or when NCES is delayed in releasing data. We are concerned that this proposal would shift the coordination of this data from ED to LEAs, and increase the administrative burden for LEAs. Instead, we encourage ED to consider clearly stating the eligibility requirements on the application form as it may reduce the number of ineligible districts from applying.

**222.91 & 222.94 - What Requirements Must an LEA Meet to Receive a Payment Under Section 8003 for Indian Lands Children? & What Are the Responsibilities of the LEA with Regard to IPPs?:**

NAFIS supports communication and collaboration between LEAs and Tribes and parents of Indian lands children. While the relationships among these important stakeholders is predominantly positive, we realize there is a variance in the strength of these relationships. Wherever possible, we encourage ED to provide technical assistance, explicitly indicate that technical assistance or mediation will be provided at the request of either party, establish positive incentives rather than punishment, and issue non-regulatory guidance as a method to advance the shared goal of better communication, rather than additional requirements for LEAs. NAFIS is concerned with proposed regulations that add additional

steps to the application process and require additional time and burden for LEAs, particularly when noncompliance may lead to the withholding of Impact Aid funds.

There are several proposed changes to the IPPs that would require additional steps in the application process for Indian lands school districts. For example, the LEA must provide an assurance with the Impact Aid application that the LEA has responded in writing to the input received during the Indian Policies and Procedures (IPPs) consultation process. This assurance verifies that the LEA has given consideration to the input from Tribes and parents of Indian children. A proposed regulation requires IPP waivers to be submitted with the application and include a written statement from a tribal official that the Tribe has received a copy of the IPPs, understands the requirements that are being waived, and is satisfied with the LEA's educational services. Additional IPP requirements include: LEAs shall consult tribes as to their preferred method of communication to ensure maximum participation; LEAs shall distribute relevant information related to Indian children's participation in the LEA's education programs and activities; LEAs shall respond annually in writing to input obtained during the IPP consultation process, disseminate these responses prior to submission of the IPPs to ED, and provide a copy of the IPPs to the tribe annually. We share ED's intended goal of ensuring consistent communication between LEAs and Tribes to ultimately benefit children in these communities.

Requirements in statute or in regulations that remove or erode the authority of school boards and school leadership to provide high-quality education, or direct the use of Impact Aid funds, should be avoided. LEAs should not be penalized if a good-faith effort has been made to communicate and solicit input, but little-to-no feedback is provided from stakeholders. In addition, the level of funding and program cost can affect the ability of an LEA to provide certain services to its student population.

The expansion of time in which the LEA has to amend the IPP from 60 to 90 days is necessary, given the proposed changes. NAFIS supports this proposed change to the regulations.

NAFIS supports regular and two-way communication between LEAs and Tribes. We believe the vast majority of these relationships are strong with good communication and collaboration. The IPP consultation and dissemination requirements are intended to ensure LEAs act in good faith to meet the educational needs of Indian lands children. We caution ED from enacting additional regulatory requirements that increase the administration burden for LEAs.

#### **222.95 - How Are IPPs Reviewed to Ensure Compliance?:**

The withholding of Impact Aid funds should be used only in the most extreme circumstances, and once all other actions have been exhausted. ED should ensure LEAs and Tribes are well aware of alternative steps to address a complaint, including technical assistance and mediation.

NAFIS is concerned by the lack of information regarding ED's latitude in withholding all or part of the Impact Aid funds to address an IPP compliance issue. We seek additional clarification as to how this proposed regulation would be implemented, including what parameters would be in place for the withholding of Impact Aid funds – in terms of the latitude ED would have to decide the amount of funding to be withheld and the length of time ED could withhold funds – and what responsibility ED would have to mediate until an LEAs is found to be in compliance with the IPPs.

The expansion of time LEAs have to amend their IPPs is necessary, given the proposed changes.

**222.161 - How is State Aid Determined Under Section 8009?:**

We understand the underlying need in this proposed regulation to allow a State to release estimated equalized payments if ED has not made an equalization determination prior to the start of an SEA's fiscal year. For example, a pre-determination hearing was recently held in Kansas for FY 2016 funding. In allowing SEAs to issue preliminary equalized payments prior to an equalization determination, we appreciate ED's underlying effort to protect LEAs against overpayments, in essence, preventing situations in which an LEA would owe funding back to the State after an equalization determination. We support the 60-day window for States to fully allot aid to LEAs if that State ultimately does not meet the equalization test. In this situation, States may be compelled to delay making full payments or delay the full payment through the appeals process. Therefore, the Secretary must strictly enforce this timeline or the objective of protecting LEAs is undermined.

NAFIS recommends that ED strictly enforce the 60-day timeline that States have to make payments to LEAs if the State is determined to not be equalized.

**222.162 - What Disparity Standard Must a State Meet in Order to be Certified and How Are Disparities in Current Expenditures or Revenues Per Pupil Measured?:**

The proposed regulations spell out how a State accounts for special cost differentials that are to be included or excluded when determining the disparity in current expenditure or revenues.

NAFIS encourages ED, in the Final Rule, to provide an example of how the cost differentials would be factored into the disparity test.

**222.164 - What Procedures does the Secretary Follow in Making an 8009 Determination?:**

Under the proposed regulations the Secretary -- rather than the State or the LEA(s) -- would notify the State and all LEAs of their right to present their views within 30 days, prior to the Secretary's determination under Section 8009.

NAFIS supports this regulatory change, ensuring a consistent procedure moving forward, and puts the responsibility to inform stakeholders on the correct party: The US Department of Education.

Thank you for the opportunity to provide input on updating the Impact Aid regulations. We appreciate your careful consideration of our recommendations. We look forward to working with to answer questions or provide additional information as ED prepares to issue a further NPRM or Final Rule.

Sincerely,



Hilary Goldmann  
Executive Director



Jocelyn Bissonnette  
Director of Government Affairs